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OFFICE OF PETITIONS

In re Application of
Lorin
Application No. 09/367,623
Filed: November 23, 1999
Attorney Docket No. PF970008
For: METHOD FOR AUTOMATICALLY
ADAPTING LEVELS OF SIGNALS
EXCHANGED IN A COMMUNICATION
NETWORK

DECISION
ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed October 14, 2005 (certificate of mailing date October 7, 2005), to revive the above-identified application.

The petition is **dismissed**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." Petitioners are advised that this is not a final agency decision.

This application became abandoned for failure to timely and properly reply to the final Office action, mailed February 9, 2004, which set an extendable three month period for reply. On July 30, 2004 (certificate of mailing date July 28, 2004), petitioner filed an amendment after final in response to the February 9, 2004 final Office action and a three month extension of time. This amendment after final failed to place the application in *prima facie* condition for allowance. Therefore, the application became abandoned on August 10, 2004. A Notice of Abandonment was mailed on January 26, 2005.

Petitioner filed a petition under 37 CFR 1.181 to withdraw the holding of abandonment on July 14, 2005 (certificate of mailing date July 12, 2005). The 181 petition was dismissed on September 22, 2005 because the July 30, 2004 (certificate of mailing date July 28, 2004) amendment, while submitted timely due to the purchase of a three month extension of time, failed

to place the application in *prima facie* condition for allowance. This was explained in the Advisory Action Before the Filing of An Appeal Brief mailed with the September 22, 2005 decision on petition.

A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application.;
- (2) the petition fee as set forth in 37 CFR 1.17(m);
- (3) a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and
- (4) any terminal disclaimer (and fee set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(d).

The instant petition does not satisfy requirement (1) above.

Petitioner requests that the Office consider the July 30, 2004 (certificate of mailing date July 28, 2004) amendment after final as the required reply. Petitioner is reminded that after a final Office action, there are only five possible replies: (1) a Notice of Appeal, (2) the filing of a continuing application, (3) a 37 CFR 1.129(a) submission, if appropriate, (4) an amendment after final that makes the case ready for issuance or (4) a RCE. To be a proper reply, an amendment after final must eliminate all of the Examiner's objections and rejections, and thus place the case in *prima facie* condition for allowance.

Petitioner's amendment after final failed to eliminate all of the Examiner's rejections. The July 30, 2004 (certificate of mailing date July 28, 2004) amendment after final amendment did not place the application in *prima facie* condition for allowance, as stated in the Advisory Action Before the Filing of An Appeal Brief mailed with the September 22, 2005 decision on petition.

Therefore, petitioner has NOT filed a proper reply to the February 9, 2004 final Office action. The application remains abandoned.

Regarding the petition fee, the fee payment listed as an enclosure to the instant petition cannot be located. Therefore, deposit account no. 07-0832 will be charged the \$1,500.00 petition fee.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
Commissioner for Patents
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By hand: U.S. Patent and Trademark Office
Customer Service Window, Mail Stop Petition
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Alexandria, VA 22314

By FAX: (571) 273-8300 - ATTN: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3230.



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